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Federal Regulation of Industry

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FEDERAL REGULATION OF INDUSTRY

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C O N T E N T S

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PREFACE

The industrial development of the United States has been accompanied by attempts to restrain the free play of competition through modern trust movements. The growing concentration of industry added a new importance to the law on restraint of trade, and considerable statutory regulation of trusts were attempted.

This discourse deals with the organization of business enterprises in the United States, their practices in respect to competition, and the statutory regulations of trusts prior to 1920. It does not embrace government regulation of all industries as such, but is limited to federal regulation through statutory enactments as an outgrowth of the necessity to curb industrial activities, competition and combination.

INTRODUCTION

A HISTORICAL BACKGROUND

England. It was in England that the change from the handicraft stage to the industrial stage was most rapidly accomplished. The change is generally called the Industrial Revolution due to the sudden and far-reaching transformation in economic, political, and social life which resulted from the invention of power machinery and the use of the factory system in production.[1]

The factory system brought with it drastic changes in practically all phases of life. Following the application of steam to manufacturing, a few men -- more wealthy or more enterprising than the rest -- brought high-priced machinery, employed workmen and quickly out-distanced their conservative competitors who resisted the change. Also, there had grown up a class of enterprisers who employed a number of men under one roof, who owned the tools, bought the raw materials, and

[1] Richard T. Ely and George Ray Wicker, Elementary Principles of Economics. (The Macmillan Co., New York, 1926), p.53.

disposed of the finished product. They and not the workers possessed enough money to buy and use the new machines. Along with other wealthy men, they set up buildings where power engines were permanently installed.[1] Under these conditions the factory system grew and supplanted the domestic system.

The United States. The rise of the United States as one of the chief industrial and capitalistic nations occured after the civil war. The demands of the war greatly stimulated factory production, and the expansion of the railroads pushed back the western frontiers, facilitated the exploitation of rich natural resources and made it possible for manufacturers to sell their products in a national market to a rapidly increasing population.

Development of Industry. The industrial development of the United States advanced slowly up to the end of the eighteenth century. After that it gathered greater speed and momentum as the development of the vast natural resources was undertaken. "The industrial growth of this

[1]Carroll R. Daugherty, Labor Problems in American Industry. (The Houghton Mifflin Co., Boston, 1933) p.42.

nation, as that of other nations, has been accompanied by the use of machinery, by specialization, division of labor, concentration, and finally by an increasing degree of public control."[1]

Results of the Industrial Revolution. As the factory system supplanted the domestic system a great upheaval in the economic order took place. Traditional home industries, such as spinning, weaving, the making of bread, and practically everything else were taken over by factories. The family home lost its importance as a center of economic production and men, women, and children in large numbers followed the home industries into the factories.

The problems which emerged from the factory system are numerous. So much so that a detailed discussion of them is forbidden. However, it may be said that the early development of this stage was characterized by: the reclassification of society, the break-down of home industries, growth of factories, growth of cities, more elaborate development of transportation facilities, expansive

[1]Louis Ray Wells, Industrial History of the United States. (The Macmillan Co., New York, 1923),p. V

growth of markets, and the rising of intense competition.

Competition Among Industries. Under the gild system[1] of manufacturing for purely local markets prices, as well as many other elements of industry, were largely regulated by custom or by law. But with the growth of great markets in the industrial stage all this was changed. Factories competed not for the trade of a single city, but for that of a whole country or of the world. The producers were no longer neighbors living in close friendly intercourse (as was the case in the domestic stage), but great hostile businesses, often situated in different sections of the country, frantically struggling to out do the other. As competition continued it became so great that industries were killing one another and their existence depended upon the establishment of harmonious operation which later led to industrial combination.

[1]See C. R. Daugherty, Lab. Prob's. pp.36-39

I. NECESSITY OF REGULATING INDUSTRY

Growth of Industrial Competition. As a whole, the struggle of competition had its good results. It was what men needed to stimulate their energy and enterprise. As the order progressed, invention followed invention, business rapidly centered in places where it could be carried on at the greatest advantage. It was thought that the state should not try to guide industry, but that industry needed only to be left alone to achieve its best results.

In 1865, industry in the United States was still governed by the doctrine of laissez-faire.[1] The controlling idea was that industry and business needed no regulation by law, but would regulate itself if left freely and without interference to operate under the natural laws of competition -- of supply and demand.

The right of every man to direct his industrial skill, his competitive powers, and his business ingenuity in ways that would benefit

[1] L. R. Wells. Ind. Hist. p.216.

him regardless of others as long as he remained within the letter of the law; in short, competition was freely proclaimed as the nucleus of trade.

The years from 1865 to 1896, were a period of intense competition. Under the laws of unhampered, unregulated competition men hastened to exploit the natural resources. It mattered not whether their methods were economical or wasteful, whether they were just or unjust, legal or illegal, the government did not interfere. The iron regions of the Great Lakes, copper in the western market district were rapidly absorbed. The vast fields of coal and petroleum, the great forests of the Upper Mississippi Valley, the South and the Far West were seized upon for private exploitation. If the government interfered at all, it was only to assist in the process. As in the case of the Homestead Act (1862) which encouraged men to press farther and farther into the prairies for land.[1]

In the meanwhile, as population and wealth increased, the struggle for the market became more and more intense.

[1] Walter E. Spahr and Others. Economic Principles and Problems. (Farrar and Rinehart, Inc., New York, 1934), Vol. 1, p.182.

Competition Among Large Industries. Fiercer competition took place as industrial units progressed and as more efficient transportation facilities were developed. Under elaborate systems of transportation, competition ceased to be battles for local markets, but a struggle for world markets. Competition among small industries was more or less composed of local battles and the world as a whole was little affected. It was the struggle of the larger units which often resulted in wide spread disaster.

Vast capital was becoming employed, being drawn from thousands of homes. Business enterprises readily sold shares of stock, bonds and securities to anyone willing and able to buy them -- foreigners, workers, business men and business institutions. In some instances house to house canvasses were conducted. Great numbers of men, women, and children were being engaged and the lives of many people were affected. Likewise were other industries and banking institutions[1] involved in the general scrimmage. With the great

[1]Horace White, Money and Banking. (Ginn and Co., Boston, 1914), Chap. XV.

expansion of business and the necessities of finance a heavy strain was placed upon the money market.[1]

Railroad Rate Wars. The effects of the intense competition was greatly felt by the railroads. As the railroads expanded the real competition began. There were great railroad-rate wars. Rates were reduced to such a low figure that no road could continue without a loss. Citing the experience of the trunk line railroads between New York and Chicago[2] as an example, "Several railroads built from the Atlantic seaboard reached Chicago at about the same time, and in order to get additional traffic they began cutting rates. As they found their trains less than half filled, they reasoned that by cutting rates they could get more business without increasing operating costs, and thus secure a larger net revenue. But everytime one railroad cut its rates, its competitor did likewise, until the point was reached where a passenger

[1]Davis Rich Dewey, Financial History of the United States. (The Longmans, Green and Co., New York, 1928), p.477.

[2]Spahr and Others, Econ. Prin's & Prob's. Vol.II, pp.129-130.

was carried from New York to Chicago for twenty-five cents and a carload of wheat moved for a dollar in the reverse direction."

The inevitable result was that many weak roads were forced to cease operating and were taken over by stronger roads.

Efforts to Eliminate Competition. In order to avoid the waste and destruction of competition, there was a growing tendency of competitors getting together and agreeing upon some form of division of work and profit. Consequently the idea of operating together to one end came into being. This idea, when practiced, began rapidly supplanting competition.

The desired harmony among competitors was accomplished in several ways-: notably by the natural growth in the size of individual plants, by the absorption of many weak concerns by a single strong one, or by a combination of antagonistic companies. During the years from 1870 to 1901, four principal sorts of agreements were tried: namely, pools, trusts, holding companies, and industrial amalgomations. The important legislative and judicial proceedings instituted

against these agreements will be later referred to.

The pool was the first and the commonest method of restricting competition. It was tried most extensively on the railroads in order to survive the disastrous competition which threatened to bankrupt all of the roads.

The most effective kind of railroad pool was an agreement among the separate managements (1) to maintain certain specific rates, (2) not to compete for business, and (3) to divide the business or the revenues among the members in accordance with the percentages agreed upon in advance.

As the evils of discriminatory rates (facilitated by pooling agreements) increased, pools were outlawed by the Interstate Commerce Act -- enacted by Congress in 1887.

Following the illegitimation of pools, other methods of eliminating competition were tried. The legal minds of great industries were busily occupied attempting to devise some scheme which would free business from the dangers of competition warfare and could be so conducted as to evade the

law.

Finally the trust was discovered for this purpose. Its purpose was to secure harmony and cooperation among the different concerns which had previously been competitors. However, the device had hardly been created when legal proceedings were instituted against them. They were held illegal by many state courts and were outlawed by Congress in the Sherman Anti-Trust Act.

Resulting from this act, the holding company was resorted to. This new expedient to restrain competition consisted of the formation of a corporation authorized to buy and hold the stocks of other companies.

In many instances, the desired harmony of operation was brought about by the actual absorption of various competing plants by a single organization. Although they were known as trust they actually owned the plants and conducted the financial and industrial operation. Instead of being trusts as they were known, they were in reality huge manufacturers.

Although the various forms of industrial combination tended to instill cooperation among

industries, there was a growing opposition against them. This opposition became so greatly pronounced that it later resulted in legislative action against them.

II. FEDERAL REGULATION

A. EARLY TRUST LEGISLATION

The industrial movement began to be viewed with great concern by the people of the United States as : (1) the natural resources were absorbed, (2) monopolies tended to develop, (3) dishonest methods were practiced, (4) corporations became more powerful and (5) attempted to openly evade the law. A large majority of the people were coming to the conclusion that something must be done to regulate, control or prohibit the activities of industry.

Interstate Commerce Act. The beginning was made with the railroads in 1885, when the United States Senate appointed a committee to investigate railroad discrimination. This investigation revealed (1) that unreasonable rates were charged between points where there was little or no competition; (2) that local rates were excessivley high as compared with the through rates; (3) that discriminations were made in favor of certain individuals and certain places at the expense of others, (4) that rebates, drawbacks, and concessions

to favorite shippers were uncommon; (5) that passes were distributed to distinguished classes, and (6) that capitalization was inflated and managements were wasteful. Largely as a result of this investigation, Congress, in 1887, enacted the Interstate Commerce Act, which was approved by the President on February 4th,[1]

The act of 1887, was designed principally to prevent unreasonable and discriminatory rates and practices.[2] For the enforcement and administration of its provisions, a commission composed of five members (later enlarged to eleven) was created. This commission, known as the Interstate Commerce Commission, from time to time has had the enforcement and administration of additional legislative requirements with regard to interstate commerce imposed upon it.

The Commission had the power to expose unfair or unreasonable rates, prevent unfair practices of companies doing an interstate express business and was directed to prescribe the rules in accordance with which the railroads should be paid for carrying the mails and for all services by them

[1] Westel W. Willoughby, Principles of the Constitutional Law of the United States. (The Baker Voorhis and Company, New York, 1930), p.329

[2] M. T. Sharfman, "Interstate Commerce Commission", Encyclopedia of the Social Sciences. (1932), Vol. 8, p.230.

in connection with that. The Commission was also impowered to prescribe the manner in which the interstate carriers shall keep and report their accounts, and of making a valuation of railway properties.[1]

These and a great variety of other duties and powers have been placed upon the Commission. Quite a few of them have been reviewed by the courts.

In Interstate Commerce Commission vs Illinois Central Railway Co., the court said, "Beyond controversy, in determining whether an order of the Commission shall be sustained or set aside we must consider (a) all relevant questions of constitutional power or right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous one, viz., whether even although the

[1]Willoughby, Prin's of Const. Law. p.330

order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such a unreasonable manner as to cause it in truth to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. Plain as it is that the powers just stated are of the essence of judicial authority, and which, therefore, may not be curtailed, and whose discharge may not be by us in a proper case avoided, it is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised. Power to make the order, and not the mere expediency or wisdom of having made it, is the question."[1]

Sherman Anti-Trust Act. The opposition to trusts crystallized in 1890, in the passage of the Sherman Anti-Trust act - July 2. This Act was designed to protect trade and commerce against un-

[1] W. W. Willoughby. Prin's of the Const. Law. pp.335-336.

lawful restraints and monopolies. The first two sections of this measure read as follows:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section 3 makes the prohibition of restraints of trade applicable within the Territories and

District of Columbia, and to commerce between them and any State of the Union or a foreign State.

Section 4 gives jurisdiction to the Circuit Courts of the United States to prevent and restrain violations of the act, and directs the several District Attorneys of the United States to institute proceedings in equity to prevent and restrain such violations, and specifically provides that the courts may issue, in appropriate cases, restraining orders or prohibitions, pending final decrees.

Section 5 provides for the issuance of subpoenas to bring before the courts the parties provided against.

Section 6 provides that "any property owned under any contract or by any combination, or pursuant to any conspiracy mentioned in Section 1 of this Act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law."

Section 7 provides that "any person who shall be injured in his business or property by any other

person or corporation by reason of anything forbidden or declared to be unlawful by this Act, may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of the suit, including a reasonable attorney's fee."

Section 8 of the act declares that where the words "person" or"persons" are used in the act they are to be deemed to include corporations and associations existing under or authorized by the laws of either the United States, a Territory, a State, or any foreign country.[1]

Judicial Interpretation. The Sherman Anti-Trust Act was carefully drawn by eminent lawyers after due discussion and consideration. However, it is worded in such general terms that a deal of interpretation has been needed to make its meaning applicable. Much doubt has been expressed over the relation of the second section concerning "monopoly" to the first section on "restraint of trade."

[1]Willoughby, Prins. of Const. Law Etc. pp.343-344.

The Federal Department of Justice has been very active in prosecuting alleged violators of the Sherman Law. The first cases under the act were not adequately drawn and perhaps not so vigorously prosecuted as of late.[1] This was because in the beginning, neither the law nor the trusts were so well understood. Thus, the earlier applications of the law are open to considerable criticism.

The first case decided by the Supreme Court was United States vs E. C. Knight Co. In this case the Government contended that the acquisition by the American Sugar Refining Company of the stock of the E. C. Knight Co. and of three other independent sugar refining companies of Pennsylvania was with the object and effect of establishing a substantial monopoly of the industry, and that the provisions of the act of 1890 with reference to the monopolization or combination or conspiracy to monopolize trade and commerce among the States was violated inasmuch as the product was sold throughout the country and distributed among the States. The court held that the act did not extend to combinations, conspiracies

[1]Lewis H. Haney, Business Organization and Combination. (The Macmillan Co., New York, 1926), p.420.

or monopolies relating to the manufacture of commodities, this being a field reserved exclusively to the States.

It was not certain whether railroads should be included within the scope of the act. This question was answered in the affirmative in the Trans-Missouri Freight Association case (1897) and the Joint Traffic Association case (1898). Here a majority of the Supreme Court definitely refused to consider the question of reasonableness of restraint in interpreting the statute.

In the two cases Hopkins vs United States and Anderson vs United States (1898) it was held that the operations of live-stock exchange was not prohibited by the anti-trust law. In the former, it was held that the exchange merely provided a facility for interstate commerce, but was not itself engaged in such commerce, while the kind of contract condemned by the act is one whose direct and immediate effect is a restraint upon that kind of commerce which is interstate. In the latter, the combination was held to regulate the business itself, but not interstate commerce.

The Addyston Pipe and Steel Company, once a member of the Associated Pipe Works, was declared illegal under the Sherman Act in the case of Addyston Pipe and Steel Co. vs United States (1899). In this case six companies, engaged in the manufacture and sale of iron pipe, had formed a combination whereby competition in the sale of pipe throughout the United States was practically destroyed. "The court declared that contracts between individuals or corporations, that tend directly to restrain interstate commerce are void and may be prohibited."[1]

The cases already mentioned and many others greatly demonstrated the power of the law. However, it is unnecessary to mention all of them. In view of this fact only one more will be mentioned: The Standard Oil Company of New Jersey Et Al vs The United States.

The government brought suit, November 15, 1906, against the Standard Oil Company of New Jersey, seventy subsidary corporations, and seven individual dependants, charging violation of the Sherman Act. The Circuit Court, November 20, 1909, held that the Standard Oil Company was a combination in restraint

[1]Haney, Bus. Organ. & Comb. p.423

of trade in violation of section one and a monopoly in violation of section two.

Section one reads that: "Every combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section two reads as follows:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punsihed by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

After charging that the Standard Oil Co.

was a violation of sections one and two, the bill against thirty-three of the corporate defendants was ordered dismissed, since it had not been proved that they were engaged in the operation of the combination. The Circuit Court thereupon issued a decree which provided:[1]

Section 5. That the Standard Oil Company, its directors, officers, agents, servants, and employers are enjoined from voting any of the stock in any of the thirty-seven companies named in section two of the decree, and from exercising or attempting to exercise any control or influences over the acts of these subsidiary companies by virtue of its holding of their stock -- and the subsidiary companies, their officers, etc., are enjoined from paying any dividends to the Standard Oil Company of New Jersey and from permitting the latter to vote any stock in, or direct the policy of any of them. But the defendants are not prohibited by this decree from the shares to which they are equitably entitled in the stocks of the defendant corporations that are parties of the combination.

Section 6. That the defendants named in

[1]Eliot Jones, The Trust Problem in the United States. (The Macmillan Co., New York, 1929), p.406

section two of the decree, their officers, etc., are enjoined from continuing the combination abjudged illegal, and from entering into any like combination or conspiracy, the effect of which is or will be, to restrain commerce in petroleum or its products among the States, etc., or to prolong the unlawful monopoly of such commerce possessed by defendants, either (1) by the use of liquidating certificates; by placing the control of any of said corporations in a trustee; by causing its stock or property to be held by others than its equitable owners; or by any similar device; or by (2) making any express or implied agreement together, like that adjudged illegal, relative to the control or management of any of said corporations, or the price terms of purchase, or of sale, or the rates of transportation, of petroleum or its products in interstate or international commerce, or relative to the quantities thereof purchased, sold, transported or manufactured by any of said corporations, which will have a like effect in restraint of commerce to that of the combination the operation of which is hereby enjoined.

Section 7. The defendants named in section two are enjoined, until the discontinuance of the operation of the illegal combination from engaging in interstate commerce.

Section 9. This decree shall take effect thrity days after its entry if no appeal is taken from it; and if no appeal is taken, it shall take effect, unless reversed or modified, within thirty days after the final decision of the Supreme Court upon appeal.

The Standard Oil Company, thirty-three of the thirty-seven other corporate defendants and the seven individual defendants at once appealed to the Supreme Court. The Supreme Court affirmed the decree of the lower court except in certain particulars. It held, first, that the interests involved were so vast that the defendants should be allowed six months to carry out the decree instead of only thirty days. Second, it thought that section seven of the decree might work serious injury to the public, and should not have been awarded. And finally, the Supreme Court construed section six of the decree as restraining the stockholders or the corporations, after the dissolution of the combination, from re-creating the illegal

combination, but not as depriving them of the power to make normal and lawful contracts or agreements. In short -- section six was modified to permit such lawful arrangements. The modified decree was affirmed, and the court below was allowed to retain jurisdiction to the extent necessary to compel necessary compliance in every respect with its decree.

The importance of this decision lay not in the dissolution of the companies, but rather in the interpretation of the law upon which the decision was reached. This interpretation was the so-called "rule of reason"[1]. Under this rule the court held that the Supreme Law was not intended to prevent all combinations, contracts, and the like were in restraint of trade; but that it applied only to those that exercised an undue, or unreasonable restraint.

[1]Haney, Bus. Organ. & Comb. pp.427-429

After having reviewed several important cases under the Sherman Law, it is urgent that other major legislative acts be mentioned.

Following the passage of the Sherman Act the United States Industrial Commission was appointed to investigate trusts and monopolies. In its preliminary report, early in 1900, it recommended a more detailed supervision over industrial corporations engaged in interstate operations.

Bureau of Corporations. In 1903, Congress established the Federal Department of Commerce. Within this department the Bureau of Corporations was set up, headed by a commissioner authorized to make diligent investigations into the affairs of industrial corporations engaged in interetate or foreign commerce. The Bureau made numerous important investigations of the methods employed by some of the greatest business organizations. It had no restraining power; its work was merely that of finding out the facts.[1]

[1]Wells, Ind. Hist. p.429

Mann-Elkins Act. As an outgrowth of the experience and knowledge gained from the various Senate investigations, increased new legislation resulted. Outstanding among the federal laws passed since the beginning of the twentieth century have been the Elkins, the Hepburn, the Mann-Elkins, and the Esch Cummins Act.

The Elkins Act, passed in 1903, and the Hepburn Act, passed in 1906 remedied some of the defects of the Interstate Commerce Act. The Elkins Act imposed a fine on railroad corporations for charging anything but the published rate, and likewise imposed a fine on shippers for paying anything but the published rate.

Federal Trade Commission Act. A law creating a Federal Trade Commission was passed September 26, 1914. The Federal Commission Act declared "unfair methods of competition" unlawful and the Commission determines when unfair methods are being employed and issues the necessary orders for their abandonment.

The Commission's powers of investigation were intended to make possible a continuing public check by an expert governmental body upon the

operation of the competitive system and to protect that system from abuses by inviting the "curative power of public opinion," antitrust law enforcement or added legislation. The Commission was empowered to "investigate any corporation engaged in commerce" except banks and common carriers, and to "require annual and special reports or answers in writing to specific questions, furnishing it such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships and individuals."[1] It was also authorized to investigate trade conditions in and with foreign countries "which" may affect the foreign trade of the United States," and upon direction of the president or either branch of Congress to "investigate and report the facts relating to any alleged violation s of the Anti-trust Acts by any corporation."

In the field of law enforcement most of the Commission's work has been predicated upon the mandate to prevent "unfair methods of com-

[1]Dexter Merriam Keeyer, "Federal Trade Commission", Encyclopedia of the Social Sciences. (1932), Vol. VI, pp. 165-166.

petition." In defining "unfair methods of competition" the Commission has been largely controlled by the federal judiciary. The United States Supreme Court has held that "it is for the courts not the commission ultimately to determine as a matter of law what they include.[1]

"In Federal Trade Commission vs Graty it was held that there was no basis for an order by the Commission, requiring a company selling cotton ties and bagging to desist from refusing to sell ties unless the purchases would agree to buy from it a corresponding amount of bagging as well, there being no intimation that the company had a monopoly of either ties or bagging or the ability or intention to secure one, and no averment that the public was suffering any injury from the practice or that competition had a reasonable ground for complaint. The court pointed out that the words "unfair method of competition," not being defined by the statute, it was not within the province of the court and not of the Commission ultimately to determine their exact

[1]Keeyer. Ency. Soc. Sc. Vol. VI, p.167

meaning".[1]

Clayton Antitrust Act. There was a general opinion that the prohibitions contained in the anti-trust act with reference to contracts, combinations or conspiracies in restraint of interstate trade, and to the monopolizing of such trade, were not broad enough to include many practices in the business world which were opposed to sound public policy and to constitute unfair competitive methods. To meet these views, Congress, in 1914, enacted the Clayton Act and the Federal Trade Commission Act. The provisions of the latter act have been given.

The Clayton Anti-trust Act "is more than an antitrust act in that certain clauses deal with banks, others with railroads, others with labor and labor organizations, and still others with farmers' associations."[2]

It declared illegal: (1) discriminations in price between different purchasers "in case it tended substantially to lessen competition or create a monopoly,"[3] (2) The "tying" agreement "in case it tended substantially to lessen compe-

[1]Willoughby. Prin's of Const. Law Etc. p.360
[2]Wells, Ind. Hist. p.440
[3]Ibid. p.441

tition or create a monopoly,"[1] (3) the holding by one corporation of the stock of another where the effect would be "substantially to lessen competition, restrain commerce, or create a monopoly."[2] Interlocking bank directorates were also restricted, and the relations between railroads and industrial concerns were curtailed. In short, the Clayton Act is an attempt to compel a return of the old ideals of free competition.

Webb Pomerene Exporters' Act. The Webb-Pomerene Export Act of April 10, 1918, designed to promote American export trade through the legalization of export associations, is divided into five sections.[3] Section one is devoted to a definition of certain terms used in the act.

Section two provides that nothing in the Sherman Act "shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export

[1] Wells, Ind. Hist. p.441
[2] Ibid. p.441
[3] Jones, Trust Prob. p.381.

trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: And provided further, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which enhances prices within the United States of commodities of the class exported by such association, or which substantially lessons competition within the United States or otherwise restrains the trade therein."

Section three amends section seven of the Clayton Act by providing that any corporation may acquire all or part of the stock or other capital of any company organized in accordance with the terms of the Webb Act, "unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States."

Section four declares that the provisions of the Trade Commission Act with regard to unfair methods of competition "shall be construed as extending to unfair methods of competition used in

export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States."

Section five provides that every association organized under the act shall file with the Federal Trade Commission a statement giving certain information, including the location of its offices, the names and addresses of all its officers, stockholders or members, and a copy of its articles of incorporation or association, etc. Any association failing to comply with these requirements is to be denied the benefits of sections two and three of the act, and to be subject to a fine of $100 per day to be recovered by the Attorney General.

A number of objections have arisen following the passage of the Webb Act.

It is feared that the export associations authorized by the Webb Act may be used as a means of restricting competition in the domestic market. Then there is a possibility that the Act will promote international combination, which is far worse than national commerce in that practically every-

thing will be incorporated. Another result of the organization of export combinations in the United States may be a further extension of foreign combinations. Finally, there is danger lest the pursuit of trade by large groups will tend to upset the "commercial peace" of the world.

CONCLUSION

The modern trusts were organized primarily for the purpose of suppressing or restricting competition, thereby securing monopoly prices and profits. To curb the practice of combination among industries, Anti-Trust laws, that had as their object the removal of impediments to the free play of competitive forces, were enacted. Under these statutory laws many industrial combinations and practices were outlawed, resulting, however, in much court action which seemed to test the constitutionality of the laws as they relate themselves to industrial activities.

How has all this legislative and judicial agitation affected the problem?

In his book, The Trust Problem of the United States, Eliot Jones mentioned that, resulting from anti-trust legislation, "much has been accomplished toward placing business on a higher moral plane. Fairer methods of competition in commerce have been promoted and the policy of oppression of competition has been moderated. Trusts have been dissolved into a number of poten-

tially competitive units, but the dissolutions are often ineffective and competition continues to be restrained despite the prohibition of the law."[1]

Considering these facts, the chief concern is achieving the purposes of the anti-trust laws -- the removal of impediments to the free play of competitive forces. Continuing further he says that "unfair methods of competition must be eliminated,"[2] and recommends (1) the reform of "our" corporation laws by compelling corporations engaged in interstate commerce to take out Federal charters. This would alleviate the situation somewhat, in that there would be uniform corporation laws. As matters stand today, the laws of one state are nullified by the laws of another. (2) That the monopolization of natural resources must be revised, trust dissolutions must be made more effective, and the tariff must be reformed. He admits that it would require a far-reaching program, and says, "yet it would appear that in no other way can there be secured a fair field for all and favors to none."[3]

[1]Jones, Trust Prob. p.562.
[2]Ibid. p.563.
[3]Ibid. p.253

Gilbert H. Montague in his article, Better Administration of Antitrust Laws, stated that "there are some obvious opportunities of the anti-trust laws, whether they be related or whether they be made more drastic."[1] He states further that "competition has for generations been the fundamental precept which we have accepted in the regulation of business, and that the vitality of the Anti-trust laws is due to the loyalty with which they support that principle."[2] He believes that better administration of the Anti-trust laws would render them far more effective.

In his article, How the Anti-trust Laws Should Be Modified, J. Harvey Williams advocates self regulation of industry, and believes that "the government should not interfere with the way business is transacted any more than with other forms of collective human conduct not definitely and actually proved to be contrary to public interest."[3] He further states that "it is no business of a national government to tell industria-

[1]Gilbert H. Montague, "Better Administration of Anti-trust Laws," The Annals of the American Academy of Political and Social Science. (January, 1935) Vol. 165, p.85.

[2]Ibid. p.85

[3]J.Harvey Williams,"How the Antitrust Laws Should Be Modified," The Annals of the American Academy of Political and Social Science.(January,1933)Vol.165,p.76

lists what they may or may not do. But it is proper for public authority to set up a standard such as 'unreasonable restraint of trade' and define its methods."[1]

Following the combination movement, the need for Federal legislation soon expressed itself. The Sherman Anti-Trust Act was passed in 1890. However, this Act was not very effectively enforced during its early existence, but was later streghtened by several important decisions of the United States Supreme Court. Later legislative measures (Federal Trade Commission, Clayton, and Webb-Pomerene Acts), which tended to supplant the Sherman Act, were enacted shortly afterward, but they too, proved to be unable to completely master the situation.

Other Acts have introduced more government regulation of industry. Such Anti-Trust legislation and court decisions of the Acts, together with the recent developments under the New Deal, have reflected to a considerable degree the change in public opinion and official attitudes in regard to the trust problem. "However, it seems that some industries

[1]J. Harvey Williams, "How the Antitrust Laws Should Be Modified," The Annals of the American Academy of Political and Social Science. (January, 1935) Vol. 165, p.77.

have ventured with their monopolistic practices beyond the bounds of tolerance. This may in the next few years provoke considerable litigation leading to a more definite policy."[1]

The writer believes that industrial activities should be regulated by the government when ever such activities infringe upon the welfare of those concerned. Whether this regulation be administered by anti-trust laws, by government agencies, or by government control, the welfare of the masses must be protected.

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[1]Spahr and Others, Econ. Prin's and Prob's. Vol. I, p.210.

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